

TITLE 16
BUREAU OF AUTOMOTIVE REPAIR

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC
HEARING CONCERNING
THE ESTABLISHMENT OF THE SPECIFICATIONS AND PROCEDURES
FOR A VISIBLE SMOKE TEST; AND
APPLICATION OF THE REPAIR COST WAIVER EXPENDITURE LIMIT
TO SMOKE TEST FAILURES**

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter "Bureau") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at hearings to be held at **10:00 a.m. on August 13, 2007, in the first floor Hearing Room of the Contractors State License Board located at 9821 Business Park Drive, Sacramento, CA 95827.**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be **received by the Bureau at its office not later than 5:00 p.m. on August 13, 2007**, or must be received by the Bureau at the above referenced hearing. **Comments sent to persons or addresses other than those specified under Contact Person, or received after the date and time specified above, regardless of the manner of transmission, will be included in the record of this proposed regulatory action, but will not be summarized or responded to.**

The Bureau, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Sections 44002, 44003, 44012, 44012.1, 44013, 44017 and 44036 of the Health and Safety Code and Section 9882 of the Business and Professions Code, and to implement, interpret or make specific Sections 39032.5, 44002, 44003, 44005, 44011, 44011.3, 44012, 44012.1, 44013, 44014.5, 44015, 44017, 44032, 44036, 44062.1 and 44081 of the Health and Safety Code, and Sections 9884.8 and 9884.9 of the Business and Professions Code; the Bureau is proposing to adopt the following changes to Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

INTRODUCTION:

The Bureau, located within the Department of Consumer Affairs (DCA), is the state agency charged with the administration and implementation of the Smog Check Program (Program). The Program is designed to reduce emissions from mobile sources, such as passenger vehicles and light trucks, by requiring that these vehicles meet specific in-use emissions standards as verified by periodic inspections. To ensure uniform and consistent vehicle testing, the Bureau licenses Smog Check stations and technicians and certifies inspection equipment.

This regulatory action implements the provisions of legislation chaptered in 2006¹ by incorporating a visible smoke test into the current Smog Check inspection procedures. This will be accomplished by adding specific requirements for performing the visible smoke test to provisions specifying other general elements and procedures of the Smog Check inspection.

The proposed action will also establish specific conditions and qualifications that must be met by the owners of vehicles that fail the visible smoke test in order to be eligible for a repair cost waiver.

The proposed action also includes several minor technical, grammatical and editorial changes that have no regulatory effect or that are conforming.

BACKGROUND:

AB 1870 added a requirement that the Bureau include a visual test for visible smoke in the Smog Check inspection procedures to determine the presence of smoke in automobile exhaust. It also made changes that affect the eligibility for a repair cost waiver when a vehicle fails the visible smoke test. Specifically, this bill:

1. Requires the Bureau, by January 1, 2008, to incorporate a visual test procedure for smoke during the Smog Check inspection.
2. Requires the Bureau to consult with ARB and interested parties, in developing and adopting regulations that implement the visual test procedure for smoke.
3. Provides that any visible smoke from the tail pipe or crankcase of a motor vehicle constitutes a failure of the Smog Check inspection and specifies that steam from condensation does not constitute a test failure for smoke.
4. Provides recourse to the owner of a vehicle that does not pass the Smog Check inspection to appeal the determination to a state-designated referee.

¹ Chapter 761, Statutes of 2006 (AB 1870, Lieber)

5. Provides that no repair cost waiver may be issued for a vehicle that has failed the visible smoke test unless the vehicle is owned by a low-income person, as defined.
6. Requires the Bureau, by January 1, 2008, to adopt regulations for vehicles that fail the visible smoke test, allowing a repair cost waiver for individuals under economic hardship who do not meet the definition of low-income person, as specified.
7. Provides that no new equipment may be required to implement the visible smoke test.
8. Provides that if the implementation of the visible smoke test requires updated EIS software or changes to the vehicle information database, that those changes be performed at the time of the ordinary, periodic upgrades of those systems.

Visible Smoke Test

Currently, it is possible for a smoking vehicle to pass the smog check inspection. The current Smog Check inspection measures exhaust emissions (gaseous emissions of hydrocarbons, carbon monoxide, and oxides of nitrogen), but does not test for particulate matter or tail pipe smoke. According to the Inspection and Maintenance Review Committee (IMRC), "due to the chemical composition of the smoke, the Emissions Inspection System used in smog check stations cannot measure smoke that results from a vehicle burning excessive amounts of motor oil. Therefore, it is possible for a smoking vehicle to be issued a Certificate of Compliance after passing a smog check inspection and continue to pollute the air with harmful emissions, especially particulate matter." Further, the Bureau notes that while burning oil would produce extra hydrocarbons, they may not reach the threshold at which the vehicle would fail the tailpipe portion of the Smog Check inspection. Also, the vehicle's catalytic converter (emissions control device) could eliminate or reduce the hydrocarbons but still allow the smoke particles to pass through.

According to the Bay Area Air Quality Management District, "smoking vehicles emit roughly 1.6 million tons annually of fine particle pollution. These particles are taken deep into the respiratory system, and are linked to a host of respiratory and other health problems. Recent studies have shown tailpipe smoke to be particularly toxic, and composed primarily of byproducts of lubricating oil combustion."

AB 1870 implemented a recommendation identified in a joint report by the California Air Resources Board (CARB) and the Bureau (September 2005), as well as a report prepared by the IMRC. The IMRC report recommended that BAR be statutorily authorized to implement a visual smoke inspection procedure as a component of the Smog Check inspection. In addition, the report states that the smoke inspection procedure should not require additional equipment purchases by smog check stations since a test that relies exclusively on the technician's observations of the exhaust is adequate for this purpose. According to the Bureau and CARB, including a smoke inspection may "add a minute or two to the current smog check inspection."

The joint CARB/BAR report estimates that only a small fraction of the fleet (about 200,000 vehicles) emits excessive smoke. In addition, the report indicates that "the addition of a

smoke test conceivably increases the amount of time required to conduct a smog check inspection. Therefore, smog check stations may initially increase the smog check inspection price by \$1 – \$2 each, as has occurred for previous additions to the testing procedure. As smog check technicians gain experience in the new procedure, the price invariably decreases due to market pressures.”

Eligibility for the Repair Cost Waiver

AB 1870 generally eliminated repair cost waivers for smoking vehicles, but required the Department to adopt regulations allowing a one time repair cost waiver for individuals under economic hardship who do not meet the definition of low-income person. This category of consumer is defined as: “...*individuals under economic hardship but who do not meet the definition of low-income person, as defined in Section 44062.1 ...[and] whose household means fall below the level necessary to achieve a modest standard of living without assistance from public programs.*” Currently, the Consumer Assistance Program (CAP) utilizes 225% of the FPG as the standard for participation in its low-income repair assistance option. The creation of a “near low-income” category for repair cost waivers, as mandated by AB 1870, is intended to minimize the potential impact that implementation of the visible smoke test may have on lower income level consumers that do not meet the income eligibility criteria necessary to qualify for repair assistance under the CAP.

Data from sources such as the United States Census Bureau and the California Budget Project has provided estimates for income levels required to maintain “a modest standard of living” in California for a single adult, and various sized families. In 2005, the California Budget Project published *Making Ends Meet: How Much Does It Cost To Raise A Family in California?* to establish realistic “cost-of-living” figures by county and by family size. The data was compiled from Census sources, and takes into consideration a broad range of factors such as child care costs, health care costs, transportation, taxes, rent costs adjusted for location and various others not always considered in the FPG. The report estimates monthly expenses for households ranging from single person to two parent/ two children families, to meet a basic standard of living, without public or private assistance. However, the dollar figures estimated to provide a basic standard of living without public or private assistance, do not match the 225% of FPG currently utilized by CAP for RA eligibility. The disparity between the California Budget Project basic standard of living without public or private assistance, and CAP’s eligibility requirements of 225% of FPG, can be best alleviated by the adoption of a 250% of FPG threshold for the AB 1870 “near low-income” repair cost waiver eligibility standard.

CURRENT REGULATION:

Existing regulations in the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 5.5, are summarized as follows:

1. Section 3340.42 prescribes various inspection and test procedures that are to be performed in the course of a Smog Check inspection.

2. There is no regulation addressing any eligibility criteria for obtaining a repair cost waiver.

EFFECT OF REGULATORY ACTION:

The proposed action will make the following changes to existing regulation:

1. Amend Section 3340.42 of Article 5.5 of Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
 - a. The entire section will be reorganized. Some subsections will be relocated and renumbered. Some paragraphs and subparagraphs will become subsections and others will be consolidated in new subsections. For example:
 - (1) Paragraph (1) of subsection (a) will become subsection (a) and paragraph (2) of subsection (a) will become a new subsection (b).
 - (2) Paragraph (3) of subsection (a) will become a new subsection (c) and the current paragraph 4 of subsection (a) will become paragraph (3) of the new subsection (a).
 - (3) The current subsection (b) will become subsection (d).
 - (4) A new subsection (e) will be added, as discussed further below.
 - (5) The current subsection (c) will be relocated to the end of Section 3340.42, will be renumbered subsection (g), and the redundant provisions of paragraph (5) will be deleted.
 - (6) The current subsection (d) will become subsection (f).
 - b. A new subsection (e) will be added to require the performance of a visible smoke test as part of every Smog Check inspection beginning January 1, 2008, and to establish the conditions and procedures for performing the test, as follows:
 - (1) The test for visible tailpipe smoke shall be performed immediately following the tailpipe emissions phase of the smog check inspection. The vehicle's engine shall be running at idle. The technician performing the test shall exit the vehicle, go to the tailpipe area of the vehicle, remove the emissions inspection system exhaust probe from the tailpipe, and observe the tailpipe area for at least 10 seconds. If

the technician observes smoke, the vehicle fails the visible smoke test and the failure shall be entered into the emission inspection system, as specified.

- (2) The test for visible smoke emanating from the crankcase shall be performed during the under hood portion of the visible fuel leak inspection specified in this section. The crankcase and PCV systems shall not be disconnected during this phase of the visible smoke test. With the vehicle's engine running at idle, the technician shall observe the crankcase and PCV systems for at least 10 seconds. If the technician observes smoke emanating from the vehicle's crankcase or PCV systems, the vehicle fails the visible smoke test and the failure shall be entered into the emission inspection system, as specified.
 - (3) If no smoke is observed emanating from the vehicle's tailpipe, and if no smoke is observed emanating from the PCV or crankcase systems, the vehicle passes the visible smoke test and the technician shall enter that result into the emissions inspection system, as specified. However, this entry shall be superseded by an entry for any failure that would normally be recorded in the same category.
 - (4) Smoke that is observed emanating from any area of a vehicle other than the vehicle's tailpipe, or crankcase or PCV systems, regardless of the cause, shall not constitute a failure of the visible smoke test.
 - (5) If the vehicle fails the visual smoke inspection, the technician shall: document the failure by writing or stamping on the VIR that is given to the customer and the VIR that is retained by the station, in the "Other Emission Related Components" section, "Failed for visible smoke," or "Failed visual smoke test;" and provide to the customer the bureau's *Visible Smoke Test Failure Consumer Information Sheet*, form SMOKE INFO (01/07), with the applicable items completed on the check lists. The bureau will furnish stations with a supply of information sheets.
 - (6) For the purposes of this subsection:
 - (A) "Tailpipe" means anywhere the vehicle's exhaust is designed to exit the vehicle under normal conditions.
 - (B) "Unobstructed view" means that there is nothing in the shop environment, which prevents the technician from observing the exhaust emitting from the vehicle's tailpipe.
- c. Other minor conforming, grammatical and editorial changes that have no regulatory effect are also included.
2. Add Section 3340.43 to Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:

The addition of this section provides that the owner of a motor vehicle that has failed the

visible smoke test shall only be eligible for the repair cost waiver specified in subdivision (a) of Section 44017 of the Health and Safety Code under the following conditions:

- a. The owner has a household income greater than the income eligibility limit for CAP RA, but equal to or less than two hundred fifty percent (250%) of the federal Poverty Guidelines (FPG), as published by the U.S. Department of Health and Human Services; and
- b. The owner's household income has been verified in accordance with Section 3394.6; and
- c. The owner is not receiving any form of public assistance from any agency; and
- d. The vehicle's required emissions control equipment is not missing and has not been rendered inoperative.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

Nondiscretionary Costs/Savings to Local Agencies:

None.

Local Mandate:

None.

Costs to Any Local Agency or School district for Which Government code Section 17561 Requires Reimbursement:

None.

Businesses Impact:

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

Visible Smoke Test

The fact that this test does not add significant time to the inspection and does not require any additional equipment suggest that these regulations will not have a significant adverse impact on inspection businesses. The Smog Check industry may incur some minor costs in training technicians to perform smoke inspections, but this would be more than offset by additional repair revenue potentially generated from repairing vehicles that fail the smoke test. In addition, a few vehicle-recycling businesses may actually see increased revenue due to additional motorists qualifying for the CAP Vehicle Retirement option.

Eligibility for the Repair Cost Waiver

The business impact of extending repair cost waiver eligibility to “near low-income” consumers cannot be determined until the number of vehicles failing Smog Check *strictly* for visible smoke can be determined. It is difficult to estimate the number of consumers in the “near low-income” group, or how many would opt for the repair cost waiver, as opposed to the Vehicle Retirement or Repair Assistance options of the CAP. However, the potential for the automotive repair industry to realize an increase in revenue from the repair of those vehicles may offset any adverse economic impact created by the extension of repair cost waiver eligibility to “near low-income” consumers.

Impact on Jobs/New Businesses:

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, other than the Business Impact described above, and that are known to the Bureau are:

Visible Smoke Test

Adding a smoke test to a Smog Check inspection/test may add a minute to the current procedure; however, other than the additional time, most consumers would be unaffected by this change. It is estimated that only a small fraction of the fleet – about 200,000 vehicles – will fail the smoke test.

Consumers whose vehicles are identified as smoking would incur additional repair costs. This would not be a new burden as State law already prohibits the operation of excessively smoking vehicles. This change would simply provide an additional mechanism to enforce the existing statute. Because excessive smoke is an indicator of an engine problem, consumers whose vehicles are repaired would reap the benefit of a better performing vehicle.

Eligibility for the Repair Cost Waiver

As provided in subdivision (e) of Section 44017 of the Health and Safety Code, the one time repair cost waiver is not available to motorists whose vehicles fail the visible smoke test, unless they meet income eligibility requirements established by the Bureau. Providing qualifying motorists with the benefit of the one time repair cost waiver will allow them to register their vehicles, after making some repairs, without incurring a major economic hardship. Most smoking vehicles require substantial engine repair at a cost far exceeding the minimum expenditure (\$450) required to obtain a repair cost waiver. Some qualifying repairs may help to reduce vehicle smoke, however others may not.

Effect on Housing Costs:

None.

Effect on Small Business:

The Bureau has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau at 10240 Systems Parkway, Sacramento, California 95827.

**AVAILABILITY AND LOCATION OF THE RULEMAKING FILE
AND THE FINAL STATEMENT OF REASONS**

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments
concerning the proposed administrative
action may be addressed to:

The backup contact person is:

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WEB SITE ACCESS

Materials regarding this proposal can also be found on the Bureau's Web site at www.smogcheck.ca.gov.